

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 12-03085-01/10-CR-S-MDH
)	
BRANDON FRANKLIN, et al.,)	
)	
Defendants.)	

ORDER

Pending before the Court is the Report and Recommendation of the Magistrate (Doc. 184) pertaining to (1) the Motions to Dismiss Count I of the Superseding Indictment filed by defendants Douglas Franklin, Dewayne Barnhart, Austin Nail, Brandon Franklin, Caitlyn Franklin, Dayne Nail, Jeremy Elliott, and Travis Elliott (Docs. 132, 134, 140, 142, 146, 150 and 157); (2) the Motions to Dismiss Count Two of the Superseding Indictment filed by defendants Douglas Franklin, Jeremy Elliott, Travis Elliott, Brandon Franklin, Caitlyn Franklin, and Dayne Nail (Docs. 133, 143, 147 and 156); and (3) the Motions to Dismiss Count Two and Counts Four through Fifteen of the Superseding Indictment filed by defendants Jeremy and Travis Elliott and Dayne Nail (Docs. 139 and 149). Defendants Brandon Franklin and Caitlyn Franklin have filed Objections to the Magistrate's Report and Recommendation (Docs. 185 and 186).

The Court has carefully reviewed and considered the Motions to Dismiss filed by the various defendants, the government's Suggestions in Opposition to those motions (Doc. 166), the Magistrate's Report and Recommendation (Doc. 184), and the objections (Docs. 185 and 186).

Defendants' motions raise interesting issues concerning the government's theory of the case, including, among other things, the question of whether a product labeled as not being fit for human consumption can have as a victim a human who consumes the product contrary to the

warning. Also of interest is defendants' allegation that the analogue state statute is vague as applied to the factual scenarios alleged in the indictment, and that the prosecution is, therefore, rendered arbitrary. Finally, defendants suggest that the statutory scheme under which the government proceeds is the result of improper delegation of authority from Congress to the Executive Branch.

While the issues raised by defendants raise legitimate concern and interest, they do not require dismissal at this stage of the proceedings. The Eighth Circuit, when given the opportunity to rule on the constitutionality of the analogue statute, has not thus far found it unreasonably vague. That does not mean that the manner in which the statute is being applied to the instant defendants might not ultimately found to be so. However, we believe the issues raised in the various defendants' motions to dismiss can be appropriately addressed through evidentiary rulings at trial and carefully crafted jury instructions. Based on the legal authority cited in the Magistrate's Report and Recommendations, the Court is convinced that the recommendations of the Magistrate should be adopted.

The Court hereby **ADOPTS THE REPORT AND RECOMMENDATION** of the Magistrate (Doc. 184).

The Motions to Dismiss Count One of the Superseding Indictment filed by defendants Douglas Franklin, Dewayne Barnhart, Austin Nail, Brandon Franklin, Caitlyn Franklin, Dayne Nail, Jeremy Elliott, and Travis Elliott's referenced in the Report and Recommendation (Docs. 132, 134, 140, 142, 146, 150 and 157) are **DENIED**.

The Motions to Dismiss Count Two of the Superseding Indictment filed by defendants Douglas Franklin, Jeremy Elliott, Travis Elliott, Brandon Franklin, Caitlyn Franklin, and Dayne Nail (Docs. 133, 143, 147 and 156) are **DENIED**.

The Motions to Dismiss Count Two and Counts Four through Fifteen of the Superseding Indictment filed by defendants Jeremy and Travis Elliott and Dayne Nail (Docs. 139 and 149) are **DENIED**.

IT IS SO ORDERED.

DATED: May 15, 2014

/s/ Douglas Harpool
DOUGLAS HARPOOL
UNITED STATES DISTRICT JUDGE